

EXHIBIT 2



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April 15, 2021

Via Electronic Mail

Steven S. Biss
300 West Main Street, Suite 102
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Re: *Flynn, et ano. v. CNN*, 1:21-Cv-02587 (S.D.N.Y., March 25, 2021)

Dear Steven:

I write regarding the Complaint you filed – but did not serve – in the matter *Flynn, et ano. v. CNN*, 1:21-Cv-02587, in the United States District Court for the Southern District of New York. I do not accept service of the Complaint nor will I, in this letter, engage in a substantive discussion of the many ways in which the Complaint fails to plausibly allege a claim for which relief can be granted.

Instead, I write demanding that you withdraw the Complaint. Not only does it appear that you or Mr. Flynn deliberately spoliated evidence by deleting his Twitter feed and editing his Parler account but even a cursory review of what remains of your clients' Twitter feeds makes it clear that your Complaint has no basis in fact and, as such, violates Rule 11 of the Federal Rules of Civil Procedure. This meritless lawsuit was clearly filed to cause a media blitz and harass CNN, and if you do not withdraw it, CNN will seek all available sanctions against you and the Flynn's.¹

First, as to your clients' spoliation of evidence, as you know, Rule 26 obligates you to preserve all evidence relevant to your claims. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003) (citing Fed. R. Civ. P. 26(a)(1)(A)). At paragraph 22, you cite to "Jack Flynn's Twitter account (@GoJackFlynn)" and claim that two of his Tweets you cite on pages 12 and 13 of the Complaint establish that CNN acted with actual malice. While those tweets do not establish anything of the kind, it is clear that you believe Mr. Flynn's Twitter feed is relevant to

¹ While CNN does not seek sanctions lightly, where, as here, a truly frivolous complaint warrants it, CNN will seek them. And as you know, CNN has recently been successful in obtaining them. *See, Harvey v. Cable News Network, Inc.*, No. CV RDB-20-3068, 2021 WL 1215083, at *1 (D. Md. Mar. 31, 2021) (assessing sanctions against "Plaintiff Harvey and his counsel [for] unreasonably and vexatiously extended this matter in bad faith").

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this lawsuit. But the account @GoJackFlynn no longer exists. In a Pinned Tweet dated January 7, 2021, visible to us on a cached version of the Twitter feed, Mr. Flynn announced that he deactivated his account to protest the banning of President Trump and Michael Flynn. It appears, therefore, Mr. Flynn deleted his Twitter feed *except* for those Tweets he claims support his claim. We also can see that Mr. Flynn recently deleted his postings on Parler. As you know, Rule 37 provides that a “court may impose a range of sanctions” for spoliation, “including dismissal or judgment by default, preclusion of evidence, imposition of an adverse inference, or assessment of attorneys’ fees and costs.” *Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284, 288 (S.D.N.Y. 2009). *See also* Fed. R. Civ. P. 37(e). Accordingly, please immediately confirm that you have preserved the Twitter account @GoJackFlynn and Mr. Flynn’s Parler account in their entirety or we will seek sanctions under Rule 37. Please also confirm that you have preserved Mrs. Flynn’s Twitter account, @lflynn1998, in its entirety.

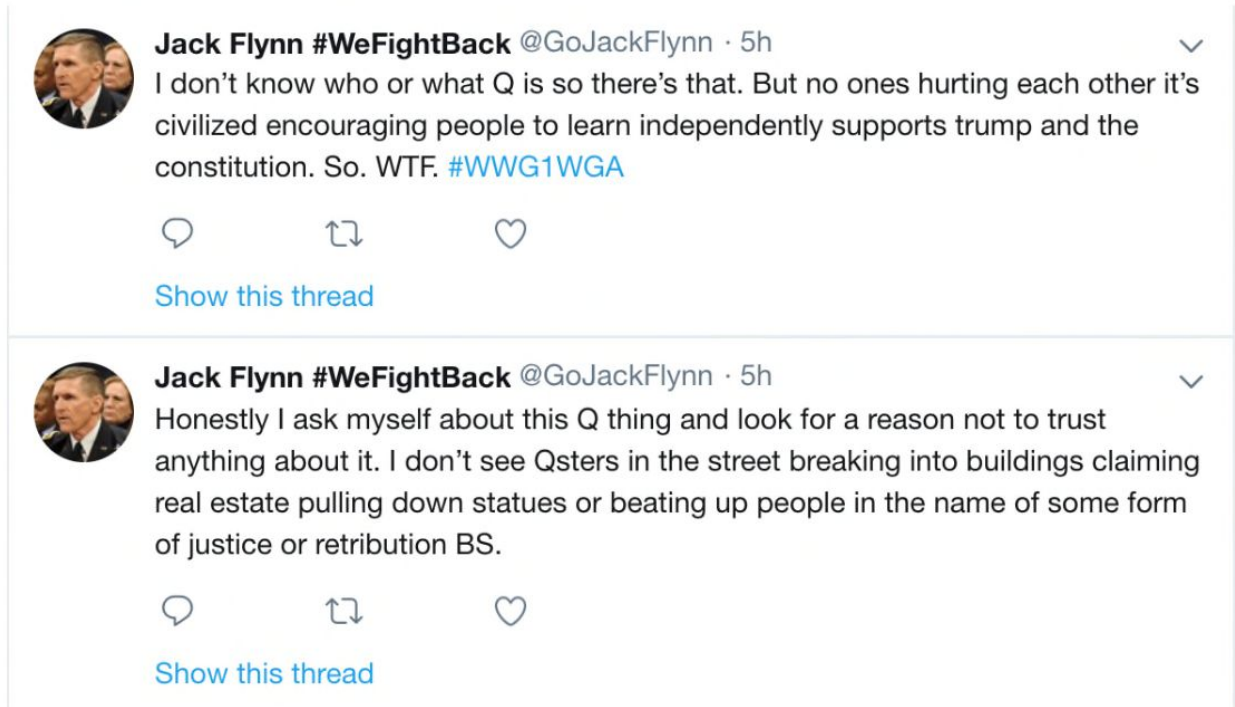
Next, the central allegation in your complaint is that CNN falsely accused Jack and Leslie Flynn of being “followers or supporters” of QAnon, Complaint ¶ 6. CNN never made any such statement about the Flynnns, and we reject outright any argument to the contrary. Even if CNN made such an accusation (and it did not), the Flynnns cannot prevail on their claim because your clients, by their own behavior, have ratified QAnon principles and speakers. Any association between your clients and QAnon is due to your clients’ own voluntary actions and not because of CNN reporting. Accordingly, the Flynnns are clearly unable to demonstrate, as they are required to do, that the alleged defamatory statements are false. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 768-69 (1986) (“where a newspaper publishes speech of public concern, a ... plaintiff cannot recover damages without also showing that the statements at issue are false.”).

Initially, we note that it is a video tweeted out by Michael Flynn of your clients saying the oath of office followed by the QAnon slogan “Where We Go One, We Go All” that associates your clients with QAnon – a fact notably absent from your complaint. This video alone establishes the truth of the CNN report at issue in the Complaint.² In your Complaint, at paragraph 4, you mention portions of this video but omit the fact that your clients repeated the QAnon slogan. You clearly knew that the video contained footage of your clients saying the slogan. The disingenuous way in which you describe the video tweeted out by Michael Flynn in the Complaint on its own is sufficient to subject you to sanctions for playing “too fast and loose with [your] ethical and professional responsibilities”. *Jianjun Chen v. WMK 89th St. LLC*, No. 1:16-CV-5735-GHW, 2020 WL 2571010, at *10 (S.D.N.Y. May 20, 2020) (Woods, J.).

² Scores of news agencies around the globe reported on it – all of them describing your clients as using language associated with QAnon. For just a few of the many examples, see: [General Michael Flynn leads friends in reciting oath to Constitution and QAnon slogan on July 4th | Daily Mail Online](#); [Michael Flynn recites oath of office using slogan associated with QAnon | Washington Examiner](#); [Gen. Flynn Flames The Q-Anon Fire As He Takes The Oath and Says WWG1WGA! \(welovetrump.com\)](#); [Fmr. NSA Michael Flynn apparently takes 'QAnon' oath on Independence Day \(msnbc.com\)](#); [Q: Into The Storm \(Season 1, Episode 6: The Storm\) | HBO](#)

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Moreover, there is significant evidence of the Flynn's knowledge of and fluency in QAnon's slogans and code language beyond that one video – evidence you must have been aware of before filing the Complaint because it is contained in the very Twitter feed you cite at paragraphs 12 and 13. For instance, on August 21, 2020, Mr. Flynn tweeted:



See [Jack Flynn #WeFightBack \(@GoJackFlynn\) | Twitter \(archive.org\)](#).

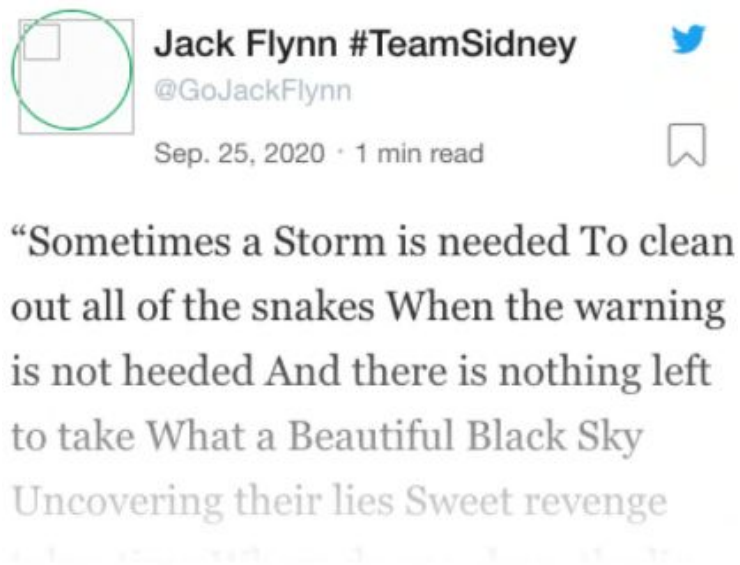
And there is more. Even in the few cached Tweets to which we still have access, Mr. Flynn frequently uses sayings and hashtags associated with the QAnon movement. In the Tweet below, he highlights his brother's involvement in "The Great Awakening", an event devoutly hoped for by QAnon followers.³ As Mr. Flynn says, I will just leave this here:

³ See [What Is QAnon? What We Know About the Conspiracy-Theory Group - WSJ](#)

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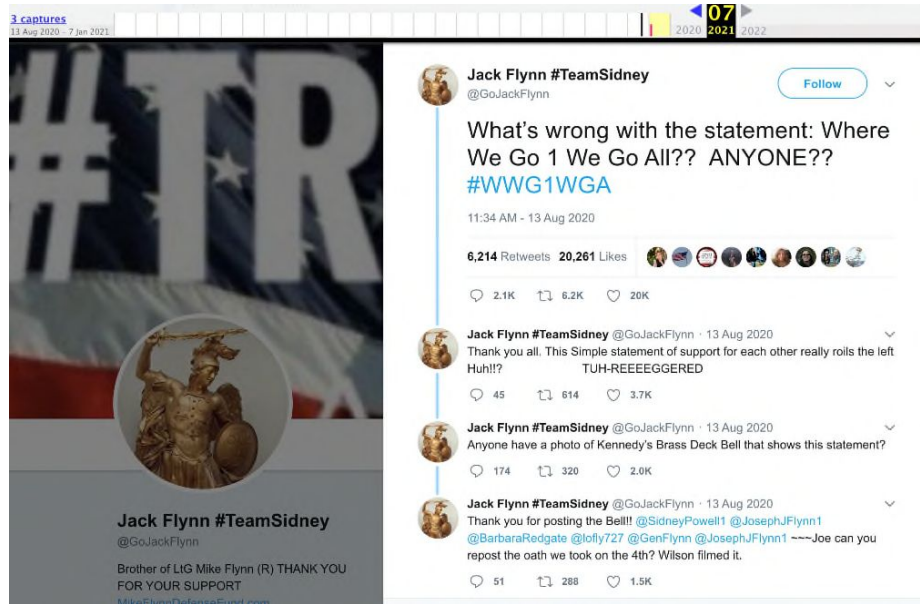
Mr. Flynn has similarly expressed his support for The Storm, a similarly longed-for QAnon event⁴:



⁴ *Id.*

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Mr. Flynn has also repeatedly used the hashtag #WWG1WGA (which stands for “Where We Go 1, We Go All,” the QAnon Oath)⁵, and, in the series of Tweets shown below, called for the republication of the very clip of him “Taking the Oath” about which he complains, as well as soliciting a photo of Kennedy’s deck bell cited in the Complaint.

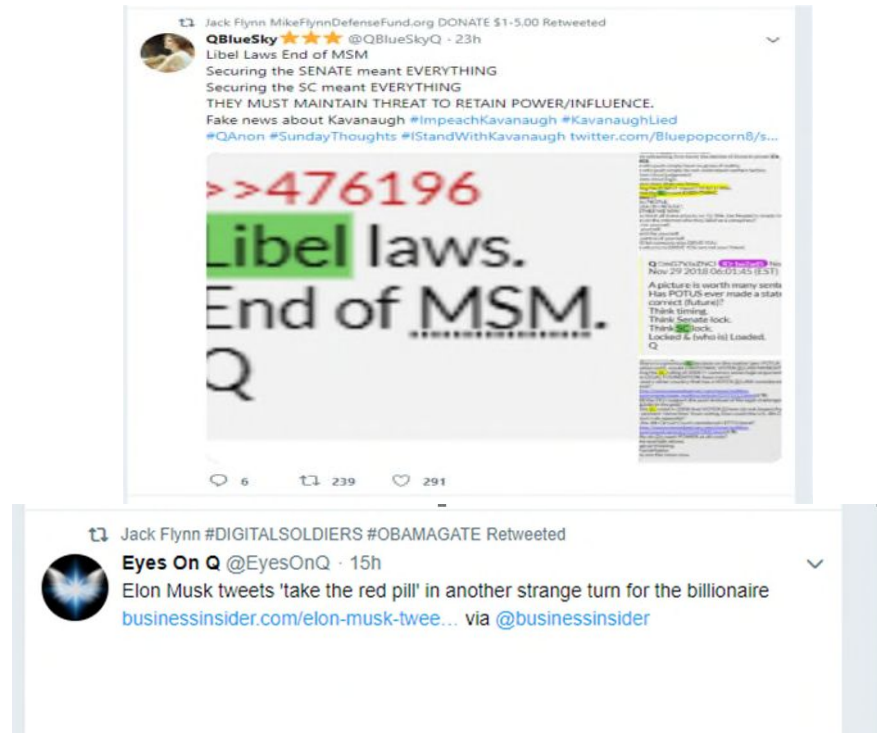


Mr. Flynn also uses other QAnon hashtags, including #beautifulblacksky, and “#digitalsoldiers”. See, e.g. https://web.archive.org/web/20200510211958if_/https://twitter.com/GoJackFlynn; https://web.archive.org/web/20200820182121if_/https://twitter.com/GoJackFlynn/status/1296512543213547521; <https://web.archive.org/web/20200518132106/https://twitter.com/GoJackFlynn>.

Finally, Mr. Flynn is also an enthusiastic retweeter of QAnon supporters who were banned from Twitter after the Capital insurrection on January 6. Here are but two examples:

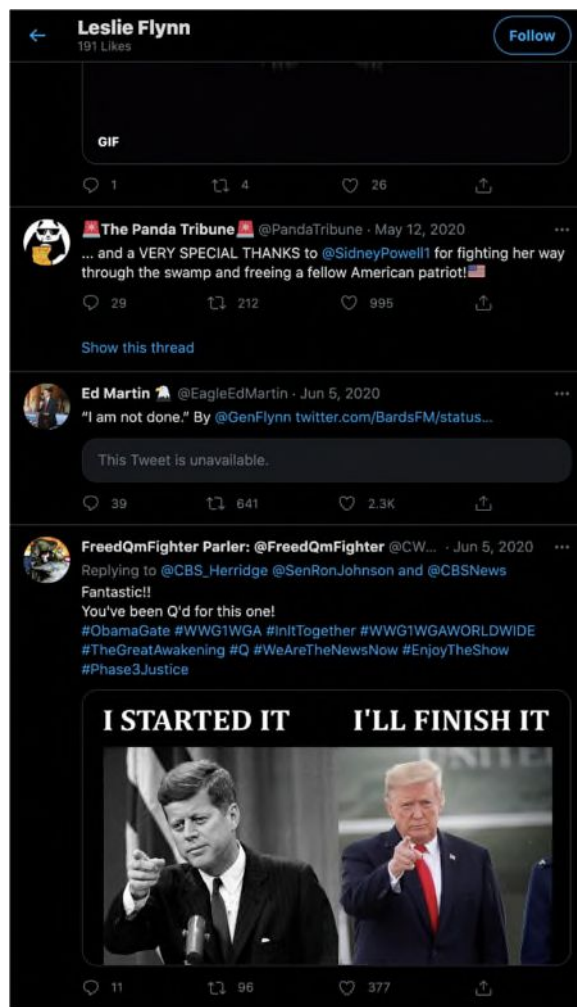
⁵ There is no question that “where we go one, we go all” is an “Oath” taken by Q Anon supporters, whether or not it is accompanied by “the same oath taken by Members of Congress.” Complaint ¶ 4; see [‘Where we go one, we go all’: Senate candidate touts QAnon after Oregon primary win \(washingtonexaminer.com\)](#). Any even minimal review of public materials would have established it as such.

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Leslie Flynn, using the Twitter handle @lflynn1998, has also “liked” QAnon conspiracies, including the QAnon belief in a link between the Kennedys and former President Trump that you seek to disclaim in the Complaint:

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In short, your clients' own Twitter accounts conclusively establish that they have publicly and voluntarily associated themselves with QAnon. The complaint is frivolous.

This is a big problem for you and your clients. As you know, “[u]nder Rule 11, an attorney has an obligation to file only papers that have a basis in fact. . . . As such, every attorney owes a duty to conduct a pre-litigation inquiry into the viability of a pleading that is objectively reasonable under the circumstances.” *Goldman v. Barrett*, 825 Fed. App’x 35, 37 (2d Cir. 2020) (citations omitted). In addition, the Court may impose Rule 11 sanctions on an attorney for making frivolous arguments without legal support. *Jianjun Chen*, 2020 WL 2571010, at *10. In fact, Judge Woods has imposed sanctions in situations just like this one, where attorneys have attempted to bring claims they knew to be based on falsehoods. *See, e.g., Int’l Techs. Mktg., Inc. v. Verint Sys., Ltd.*, No. 1:15-CV-2457-GHW, 2019 WL 1244493, at *11 (S.D.N.Y. Mar. 18, 2019), *vacated in part on other grounds*, No. 19-1031, 2021 WL 968819 (2d

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Cir. Mar. 16, 2021), *and aff'd*, No. 19-1031, 2021 WL 982208 (2d Cir. Mar. 16, 2021). Here, you either failed to conduct any pre-litigation inquiry into the Flynns' behavior OR you knowingly filed a false Complaint. Either way, your conduct is unquestionably sanctionable. Accordingly, and consistent with the attached Notice of Motion, I am writing to inform you that if you do not withdraw the Complaint, CNN will seek sanctions against you under Rule 11 of the Federal Rules of Civil Procedure.

If I do not hear from you that you have withdrawn the Complaint within 21 days, I will raise the issue with Judge Woods.⁶

Respectfully submitted,

Davis Wright Tremaine LLP



Katherine M. Bolger

⁶ This letter does not purport to constitute a complete or exhaustive discussion of all CNN's rights, contentions, or legal theories. Nothing contained here is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of CNN's rights, remedies, or defenses, whether legal or equitable, all of which hereby are expressly reserved, including, without limitation, any and all defenses that may be asserted under Rule 12(b) of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

----- X
JOHN P. "JACK" FLYNN
LESLIE FLYNN

Plaintiffs,

- against -

CABLE NEWS NETWORK, INC,

Defendant.
----- X

Case No. 1:21-cv-02587

DRAFT

**NOTICE OF DEFENDANT'S
MOTION FOR SANCTIONS
AGAINST PLAINTIFF PURSUANT
TO FED R. CIV. P. 11(C)**

Please take notice that the undersigned attorneys for defendant Cable News Network, Inc. will move before the Honorable Gregory H. Woods, United States District Judge for the Southern District of New York, at Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Room 2260, New York, New York for: (a) an Order granting Defendant's motion for sanctions against Plaintiffs John P. "Jack" Flynn and Leslie Flynn and their counsel, pursuant to Fed. R. Civ. P. 11(c); and (b) such other relief as this Court may deem just and proper.

This motion is based upon the accompanying memorandum of law, all pleadings, and such additional oral or documentary evidence as may be received before or at a hearing on this motion.

This motion is based on the fact that, despite being put on notice of the defects in the pleading purporting to assert claims against Defendant, Plaintiffs have refused to withdraw the First Amended Complaint or otherwise cure those defects. Specifically:

The First Amended Complaint seeks damages for defamation and false light. The central allegation in the Complaint is that CNN falsely accused Plaintiffs of being "followers or supporters" of QAnon. Complaint ¶ 6. Even if CNN made such an accusation (and it did not), it is not actionable, as Plaintiffs, through their own actions, have explicitly ratified QAnon

principles and beliefs. Accordingly, Plaintiffs are clearly unable to demonstrate, as they are required to do, that the alleged defamatory statements are false. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 768-69 (1986) (“where a newspaper publishes speech of public concern, a ... plaintiff cannot recover damages without also showing that the statements at issue are false.”).

In particular, in a video tweeted out by Michael Flynn, Mr. Flynn’s brother, Plaintiffs speak the oath of office taken by members of Congress and repeat the QAnon slogan “Where We Go One, We Go All.” This video alone establishes the truth of the CNN report at issue in the Complaint. Moreover, at paragraph 4 of the Complaint, Plaintiffs mention portions of this video but omit their own repetition of the QAnon slogan. The disingenuous way in which Plaintiffs describe the video in the Complaint is independently sufficient to subject Plaintiffs and their counsel to Rule 11 sanctions.

There is significant additional evidence of Plaintiffs’ knowledge of and fluency in QAnon slogans and beliefs. A review of Plaintiffs’ social media accounts makes clear that Plaintiffs have publicly expressed support for QAnon by stating it directly, by using QAnon slogans and hashtags, and by retweeting or liking the tweets of QAnon followers. Plaintiffs and their counsel knew or should have known about these tweets before commencing this litigation, not least because Mr. Flynn’s Twitter account is referenced at pages 12 and 13 of the Complaint.

Plaintiffs, through their counsel, have a continuing obligation under Rule 11 to, *inter alia*, (i) correct or withdraw any documents filed with the Court that are defective; and (ii) conduct a reasonable inquiry into the factual contentions set forth in court filings. Fed. R. Civ. P. 11(b); (c)(2). Because Plaintiffs have failed to do so, Defendant hereby requests entry of an order

awarding to Defendant the costs and attorneys' fees incurred as a consequence of Plaintiffs' pursuit of claims which have no foundation in fact or law.

Dated: New York, New York
[date]

Respectfully submitted,

By: 

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